

Notice of Allowability

Application No.

09/590,991

Examiner

S. Devi, Ph.D.

Applicant(s)

ADAMOU ET AL.

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 08/12/04.
 2. ☒ The allowed claim(s) ~~is/are~~ 1, 4, 23, 25, 26 and 29-32, now renumbered as claims 1, 2, 3, 4, 5 and 6-9 respectively.
 3. ☒ The drawings filed on 28 February 2003 are accepted by the Examiner.
 4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

ATTACHMENT TO NOTICE OF ALLOWABILITY

Applicants' Amendment

- 1) Acknowledgment is made of Applicants' amendment filed 08/12/04 in response to the non-final Office Action mailed 06/09/04.

Examiner's Amendment

- 2) An Examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to Applicants, an amendment may be filed as provided by 37 C.F.R. 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee. The authorization to prepare this Examiner's amendment was provided by Mr. Alan Gant in a telephone interview on 13 October 2004. This application has been amended as indicated below:

(a) Claims 5-15, 17-22, 27 and 28 have been canceled.

(b) Claim 25 has been replaced with the one shown below:

--Claim 25. (Currently amended). A method of protecting a mammal against *Streptococcus pneumoniae* infection by administering to said mammal the polypeptide of claim 23 in an amount effective to elicit protective antibodies against *Streptococcus pneumoniae*.--

(c) Claim 29 has been replaced with the one shown below:

--Claim 29. (Currently amended). A method of protecting a mammal against *Streptococcus pneumoniae* infection by administering to said mammal the immunogenic composition of claim 1 in an amount effective to elicit protective antibodies against *Streptococcus pneumoniae*.--

(d) Claim 32 has been replaced with the one shown below:

--Claim 32. (Currently amended). A method of protecting a mammal against *Streptococcus pneumoniae* infection by administering to said mammal the vaccine of claim 4 in an amount effective to elicit protective antibodies against *Streptococcus pneumoniae*.--

(e) In claims 26, 30 and 32, the limitation 'animal' is replaced with --mammal--.

Status of Claims

- 3) Claims 1 and 4 have been amended via the amendment filed 06/09/04.
Claims 5-15, 17-22, 27 and 28 have been canceled via this Examiner's amendment.

Claims 25, 26 and 29-32 have been amended via this Examiner's amendment.

Claims 25, 26 and 29-32, drawn to a method of using the product of claims 1, 4 or 23, have been amended via this Examiner's amendment. These claims now depend from the product of claim 1, 4 or 23, and have been rejoined with the elected product claims, and fully examined in accordance with the provision of MPEP § 821.04. The restriction requirement made between the claimed product(s) and the process of using the same is hereby withdrawn. See paragraph 8 below.

Claims 1, 4, 23, 25, 26 and 29-32 are pending and under examination.

Objection(s) Withdrawn

4) The objection to the drawings made in paragraph 3 of the Office Action mailed 12/21/01 is withdrawn in light of Applicants' submission of the formal drawings filed 02/28/03.

Rejection(s) Withdrawn

5) The rejection of claims 1 and 4 made in paragraph 14 of the Office Action mailed 06/09/04 under 35 U.S.C § 101 as being directed to a non-statutory subject matter, is withdrawn in light of Applicants' amendment to the claims.

6) The rejection of claims 1 and 4 made in paragraph 15 of the Office Action mailed 06/09/04 under 35 U.S.C. § 112, first paragraph, as containing new subject matter, is withdrawn in light of Applicants' amendment to the claims.

7) The rejection of claims 1 and 4 made in paragraph 17 of the Office Action mailed 06/09/04 under 35 U.S.C. § 102(e)(2) as being anticipated by Johnson *et al.* (US 6,582,706, filed 12/21/1998), is withdrawn in light of Applicants' amendment to the claims.

Remarks

8) Claims 1, 4 and 23 are allowed. The previously withdrawn claims 25, 26 and 29-32 are drawn to a method of using the allowable product of claims 1, 4 or 23. Pursuant to the procedures set forth in the *Official Gazette Notice* dated March 26, 1996 (1184 O.G. 86), these process claims are now subject to being rejoined. These process claims have been fully examined for patentability under 37 C.F.R 1.104. The restriction requirement made between the claimed product(s) and the process of using the product(s) is hereby withdrawn.

Allowed claims 1, 4, 23, 25, 26 and 29-32, are now renumbered as claims 1, 2, 3, 4, 5 and

6-9 respectively.

9) Papers related to this application may be submitted to Group 1600, AU 1645 by facsimile transmission. Papers should be transmitted via the PTO Fax Center, which receives transmissions 24 hours a day and 7 days a week. The transmission of such papers by facsimile must conform with the notice published in the Official Gazette, 1096 OG 30, November 15, 1989. The RightFax number for submission of amendments, responses or papers is (703) 872-9306.

10) Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAG or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.Mov>. Should you have questions on access to the Private PAA system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

11) Any inquiry concerning this communication or earlier communications from the Examiner should be directed to S. Devi, Ph.D., whose telephone number is (571) 272-0854. A message may be left on the Examiner's voice mail system. The Examiner can normally be reached on Monday to Friday from 7.15 a.m. to 4.15 p.m. except one day each bi-week, which would be disclosed on the Examiner's voice mail system.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Lynette Smith, can be reached on (571) 272-0864.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-1600.

October, 2004


S. DEVI, PH.D.
PRIMARY EXAMINER